

REMARKS

This amendment:

- (1) Cancels non-elected claims 2-6, reserving the right to file a divisional patent application that is directed thereto,
- (2) Cancels independent claim 11 and resubmits the subject matter of claim 11 in a better form for consideration on appeal as new independent claim 16, and
- (3) Amends independent claim 12 to provide a better form of claim 12 for consideration on appeal.

In rejecting the claims of this application as unpatentable (35 USC 103), the Examiner cites five documents, i.e. (1) USP 4,815,618 to Gach, (2) USP 6,117,506 to Graboski et al, (3) USP 6,082,568 to Flanagan, (4) USP 6,076,334 to Kitahora et al, and (5) USP 4,141,680 to Kauffman et al.

Summary of USP 4,815,618 to Gach:

The Gach patent provides a container 10 having an open cylinder-neck 14. A closure member 18 includes a downward-extending skirt 22, and a surface 30 of skirt 22 is force-fit into a recess 16 that is provided in cylindrical neck 14. The upper surface of closure member 18 includes a nozzle 34 that is closed by a hinged lid 40 that friction-fits to a rim 54. A disc-like foil 56 extends across the open-top of cylinder-neck 14 and is heat-sealed thereto. The upper surface of foil 56 engages a disc 62, and a pull-ring 66 is attached to disc 62.

Importantly, Gach does not suggest a solution to the problem of mating an injection moulded neck and cap assembly (for example Gach's neck 14 and lid 40 assembly) to an extrusion-blow-moulded bottle (for example Gach's container 10).

Summary of USP 6,117,506 to Graboski et al:

The Graboski patent provides an extrusion blow molded bottle 10 having a body portion 12 and a neck portion 13 that contains external threads. In the extrusion blow molding of bottle 10, three resins are used to provide a bottle 10 having an outer layer 14 and an inner layer 16 that contain a colorant such as titanium dioxide, and an intermediate layer 18 that contains a colorant such as black oxide and ultramarine blue. Intermediate layer 18 provides material contained within bottle 10 with protection from degradation by light.

It is noted that Graboski's extrusion blow molded bottle 10 is intended to be used directly with a cap having internal threads, and that Graboski does not provide a solution for the problem of mating a resealable injection moulded cap to an extrusion-blow-moulded bottle.

It is also noted that Graboski is cited only to show a bottle that is made using a extrusion blow molding process. It is admitted that a extrusion blow molding process is per se in the prior art.

Summary of USP 6,082,568 to Flanagan:

The Flanagan patent provides a bottle-container 10 whose top-disposed neck 2 includes external threads 12. A cap 15 includes internal threads 13 that mate with external threads 12. A tamper-evident liner 8 lies intermediate the rim 17 of container 10 and the underside of cap 15. A hinged cover 4 may be lowered to cover an orifice 5 that is carried by cap 15. Container 10 may be made of glass, plastics or laminates (col. 6, lines 45-47), and cap 15 is preferably injection molded (col. 7, lines 1-3).

Again, Flanagan's container 10 is intended to be used directly with a cap 15 having internal threads 13, and Flanagan does not provide a solution for the problem of mating a resealable injection moulded cap to an extrusion-blow-moulded bottle.

Summary of USP 6,076,334 to Kitahora et al:

The Kitahora patent provides a beverage-packaging-system having a sterile chamber 30 wherein a container is filled and then capped. Resin 10 is supplied to a molding machine 12 to form a perform, which perform is then blow-molded at 14 to form a plastic container. A beverage 18 is sterilized at 20 and then supplied to a filler unit 16 whereat the blow-molded container is filled. Caps 24 of metal, or the like, are sterilized at 26 and then fed to a clamper unit 22 whereat the filled-container is capped.

Note that Kitahora's blow-molded container is used with a metal cap (i.e. a cap that is likely not resealable), and that Kitahora does not provide a solution to the problem of mating a resealable injection moulded cap to an extrusion-blow-moulded bottle.

Summary of USP 4,141,680 to Kauffman et al:

The Kauffman et al patent provides a continuous-motion blow molding apparatus (FIG.1) wherein a multi-station parison-loading-turret 10 and its transfer means 12 conveys tubular parsions into operative positions within the individual molding stations 13 of a multi-station blow-molding-rotary-turret 14. Within rotory-turret 14 the parsions are sequentially stretched longitudinally, blown to form an article such as a bottle, the bottles are cooled, and the cooled bottles are then unloaded at unloading positions 15 and 16.

Note that Kauffman et al clearly does not provide a solution to the problem of mating a resealable injection moulded cap to an extrusion-blow-moulded bottle.

Argument for the patentability of the claims remaining for consideration in this application:

The Examiner rejects the claims of this application as obvious under the provisions of 36 USC 103.

In order to establish a prima facie case of obviousness, three basic criteria must be met by the Examiner's rejection.

- (1) - There must be some suggestion in the references to combine the references as the Examiner suggests.
- (2) - There must be a reasonable expectation that the Examiner's suggested combination will succeed in solving the problem(s) that are solved by the rejected application.
- (3) - The Examiner's combined references must teach all of the claim limitations.

In addition, the teaching to make the claimed combination and the reasonable expectation of success must be found in the citations, and cannot be hindsight-based on applicant's disclosure.

As stated in IN RE MILLS, 16 USPQ2d 1430 (Fed. Cir. 1990), the mere fact that the references can be combined or modified does not render the resulting combination obvious unless the prior art also suggests the desirability of making the combination.

IN RE ROUFFET FED. CIR., NO 97-1492, 7/15/98 is also pertinent in that it addresses the use of hindsight, and states, to prevent the use of hindsight to defeat the patentability of a given invention, this court requires the Examiner to show motivation to combine the references

that create the Examiner's case of obviousness, in other words, the Examiner must show reasons that the skilled artisan, confronted with the same problems as the inventor, and with no knowledge of the claimed invention, would select the prior-art elements in the manner cited by the Examiner.

The improper use of hindsight was also addressed in IN RE Dembiczak, Fed. Cir., No. 98-1498, 4/28/99, wherein it was stated that the best defense against a hindsight-based rejection by the Examiner is the rigorous application of the requirement to show a suggestion, a teaching, or motivation to combine prior art references as was done by the Examiner.

The present application contains two independent claims, namely independent claim 12 (currently amended) and independent claim 16 (new).

The whole of independent claim 12 (currently amended) requires (among other things) a process for bottling a fluid wherein bottle-bodies are extrusion-blow-moulded, filled, and then fitted with an injection-moulded neck-and-a resealable injection-moulded cap.

The whole of independent claim 16 (new) requires (among other things) the combination of an extrusion-blow-moulded bottle-body, an injection-moulded neck-assembly, and a resealable injection moulded cap.

The present invention solves a problem in the prior art that is encountered when one attempts to achieve a good seal between a blow moulded bottle neck and a resealable injection moulded plastic cap (for example see page 2, lines 3-15 of the specification).

It is respectfully submitted that the Examiner's citations do not anticipate or render obvious the whole of independent claims 12 and 16.

The whole of claims 12 and 16 require the present application's new, unusual and unobvious combination of an extrusion-blow-moulded bottle body, an injection-moulded neck

assembly that is fitted to the bottle-body, and a resealable and injection-moulded cap that is fitted to the neck assembly, this combination solving the prior art problem of providing a resealable injection molded cap for an extrusion-blow-moulded bottle body.

The Gach patent -618 provides a container 10 whose top portion carries a base 20 having a resealable lid 40. However the claimed combination of an extrusion-blow-moulded bottle-body, an injection-moulded neck assembly that is fitted to the bottle-body, and a resealable and injection-moulded cap that is fitted to the neck assembly is clearly not taught or suggested by Gach.

The Graboski patent -506 is cited only for its showing of an extrusion-blow-moulded bottle 10, and even if Graboski were used to modify Gach such that Gach's container 10 was an extrusion-blow-moulded bottle, the whole of claims 12 and 16 is not found in this modification.

The Klanagan patent -568 is cumulative to Gach, but suggests that its cap 15 be injection molded. However, no citations suggests the Examiner's combination of Gach, Graboski and Flanagan, and it is respectfully submitted that only the improper hindsight use of the present specification allows the Examiner to make this combination.

The Kitahora patent -334 seems generally unrelated to present invention, this patent teaching only the sterile packaging of beverages. This patent offering no solution at all to the problem of achieving a good seal between an extrusion blow moulded bottle neck and a resealable injection moulded cap.

Likewise, the Kauffman patent -680 teaches only the continuous-motion making of plastic bottles, and offers no solution to the problem of achieving a good seal between an extrusion blow moulded bottle neck and a resealable injection moulded plastic cap.

From a review of the art that is cited by the Examiner, it is apparent that the Examiner has very carefully searched the presently claimed invention. This search has however only turned up bits and pieces that peripherally relate to the invention. Moreover, in order to construct a method that is taught only by the present invention, the Examiner has used the present application's claims as a recipe that contains individual items, and the Examiner has then assembled individual items of the prior art in a manner that is described only by the present invention.

It is respectfully submitted that this hindsight use of the present specification is improper, and that the claims remaining for consideration in this application are allowable.

No claim related fees are believed to be due with this response. In the event any such fees are due, please debit Deposit Account 08-2623.

It is respectfully requested that the present amendment after final rejection be entered as placing this application in a condition for allowance.

In the alternative, it is respectfully requested that the present amendment after final rejection be entered as placing this application in a better condition for consideration on appeal.

Respectfully submitted,

HOLLAND & HART LLP

By:


Francis A. Sirr, Esq.

Registration No. 17,265

P.O. Box 8749

Denver, Colorado 80201-8749

(303) 473-2700, x2709

Date: 2/21/03
3050347_1.DOC